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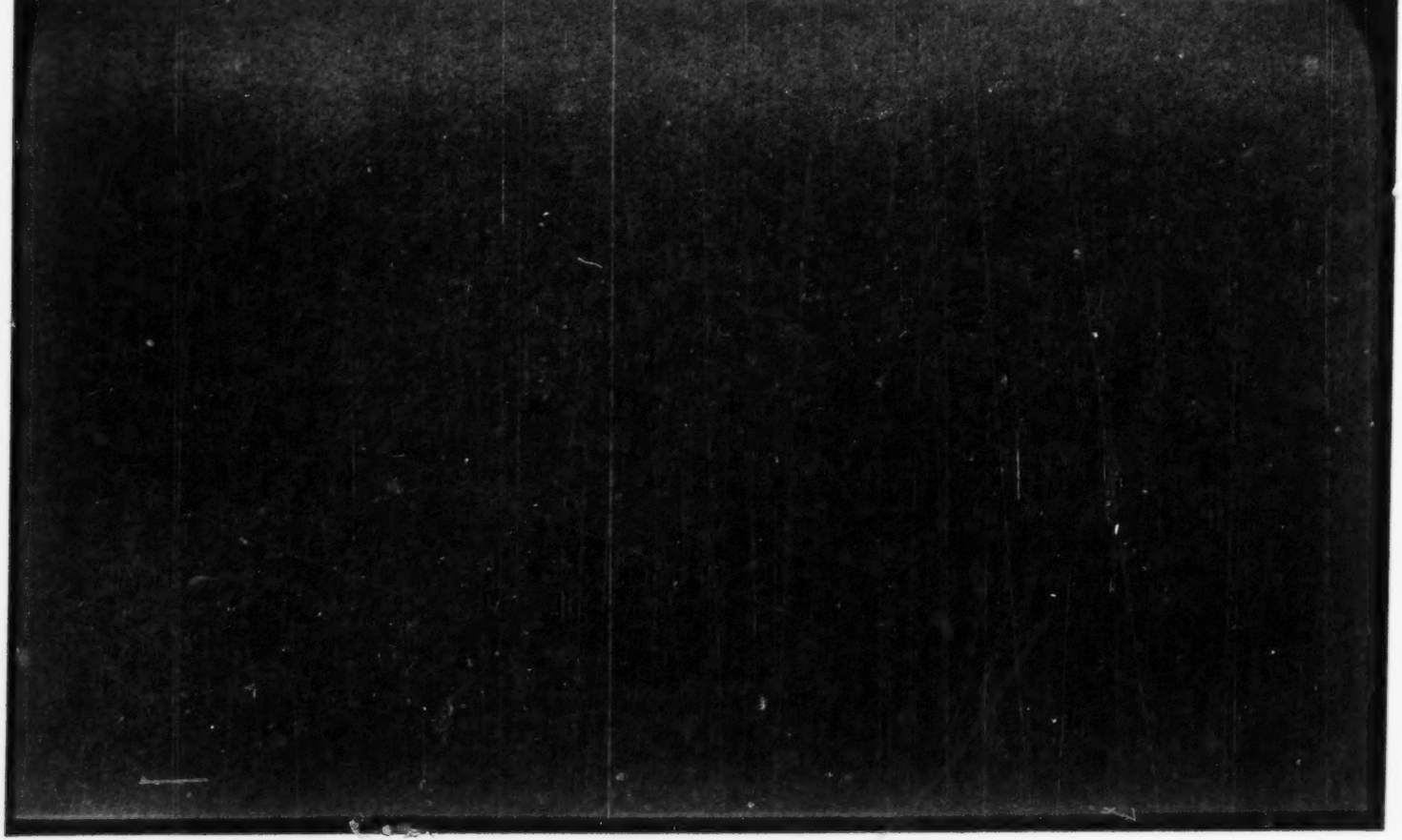

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Supreme Court of the United States

OCTOBER TERM, 1925

No.

[illegible] & Q[illegible] Railroad Company,

Petitioner

v.

[illegible] Department of Treasury of State of [illegible]

[illegible] Revenue Law [illegible] Division,

Respondent

RESPONDENT'S BRIEF AND ARGUMENT IN OPPOSITION TO PETITIONER'S APPLICATION FOR WRIT OF CERTIORARI

By its application for a writ of certiorari herein the petitioner raises but two questions for consideration by this court:

1. Did the Congress by using the words found in the act relating to taxation of real estate [illegible] the property of a municipality [illegible] the State of an employee of the department of [illegible] or [illegible] within any the territorial limits [illegible] the right of [illegible] the [illegible] should immediately

The words used in the act are simple. We quote, "In case of the death of such employee, to his or her personal representative for the benefit of," and then follows a particular enumeration of those who naturally fall into three classes—wife or children coming first, parents second, and those more remote third. There is no declaration that the liability imposed by the act shall vest in anyone, not in terms at least. The language is

> "shall be liable in damages to any persons suffering injury while he is employed, etc., or in case of the death of such employee, to his or her personal representative for the benefit of," followed by an enumeration of the three classes.

the court will say so, but it seems to us, with great deference, that a holding the other way would be more consonant with the entire purpose and spirit of the act, and the antecedent events that are well known which brought about the action on the part of the Congress in the enactment of this law.

Beginning on page [illegible] of its brief, petitioner cites cases and excerpts from opinions of the same, from various state courts of last resort construing death statutes in such states. The statutes of each particular state differ in phraseology from those of the other states and are diverse from each other in various particulars, which would have a material effect in the construction to be given to each of such statutes. With reference to such cases the highest court of each particular state is construing the exact statute, the words expressed in such statute and what the legislature enacting the statute under consideration intended by the use of the words in the statute enacted. How much of said [illegible] cases are of course, [illegible] not know. The statutes [illegible] are [illegible] from each other [illegible] and are diverse from this statute [illegible].

[illegible] Wrongful Death Act [illegible] [illegible] [illegible]

> "This is a narrow interpretation of the act, and would *operate to defeat all liability* unless the injured person should survive long enough to conduct his action to a recovery."

So here the petitioner's construction would operate to defeat all liability unless the particular beneficiary entitled to the recovery as fixed at the instant of death, should survive a sufficient length of time to permit the personal representative to prosecute an action to a recovery.

As to petitioner's contention that the Congress purposely intended to make the act of vital particulars diverse from Lord Campbell's act, the language of Mr. Justice Luther clearly and concisely states an exactly opposite conclusion, to quote his exact words,

> "The statute giving an action for the benefit of certain relatives . . . [of the deceased] is essentially unlike that of Lord Campbell's act. . . . [The latter] is an action for the benefit of the estate of the deceased person. . . . The distinguishing features of Lord Campbell's Act are identical with those of our statute. . . ."

> [ving be carry on the action for the benefit of whoever may be entitled to participate in the distribution of such recovery as may be had."

From an examination of the opinions in the cases cited by petitioner in its argument, from the states of Tennessee, Wisconsin and Indiana, it will be noted that the courts of those states in construing their respective statutes laid much stress upon the old rule so frequently declared and followed by state courts to the effect that where a statute is in derogation of the common law, the same is to be strictly construed and to not be given extended [illegible] the evident purpose of the legislature in the enactment of such statute.

[illegible]

[illegible]

[illegible]